

AMENDED IN SENATE JUNE 30, 2003

AMENDED IN SENATE JUNE 16, 2003

AMENDED IN ASSEMBLY MAY 22, 2003

AMENDED IN ASSEMBLY MAY 8, 2003

AMENDED IN ASSEMBLY MARCH 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

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**ASSEMBLY BILL****No. 1092**

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**Introduced by Assembly Member Harman**

February 20, 2003

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An act to amend Section 1749.5 of, and to add Section 1749.45 to, the Civil Code, and to amend Section 1520.5 of the Code of Civil Procedure, relating to gift certificates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1092, as amended, Harman. Gift certificates: service fees.

Existing law prohibits the sale of any gift certificate that contains an expiration date, except as specified.

This bill would also prohibit the sale of any gift certificate that contains a service fee, except as specified. For the purposes of these provisions, the bill would clarify that “gift certificate” includes gift cards, except for certain cards that may be used with multiple sellers of goods or services, as specified. The bill would also provide that the provision above does not prevent an issuer of a gift certificate from including on any gift certificate that the purchaser is entitled to a full

refund of the amount paid under specified circumstances, and would make a conforming change to a related provision.

This bill would declare that its provisions are severable and that specified provisions apply prospectively.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1749.45 is added, immediately  
2 preceding Section 1749.5, to Title 1.4A (commencing with  
3 Section 1749.5) of Part 4 of Division 3 of the Civil Code, to read:

4 1749.45. (a) As used in this title, “gift certificate” includes  
5 gift cards, but does not include any gift card usable with multiple  
6 sellers of goods or services, provided the expiration date, if any,  
7 is printed on the card. This exemption does not apply to a gift card  
8 usable only with affiliated sellers of goods or services.

9 (b) *Nothing in this title prohibits those fees or practices*  
10 *expressly permitted by Section 17538.9 of the Business and*  
11 *Professions Code with respect to a prepaid calling card, as defined*  
12 *in that section, that is issued solely to provide an access number*  
13 *and authorization code for prepaid calling services.*

14 SEC. 2. Section 1749.5 of the Civil Code is amended to read:

15 1749.5. (a) It is unlawful for any person or entity to sell a gift  
16 certificate to a purchaser that contains any of the following:

17 (1) An expiration date.

18 (2) A service fee, including, but not limited to, a service fee for  
19 dormancy, except as provided in subdivision (e).

20 (b) Any gift certificate sold after January 1, 1997, is  
21 redeemable in cash for its cash value, or subject to replacement  
22 with a new gift certificate at no cost to the purchaser or holder.

23 (c) A gift certificate sold without an expiration date is valid  
24 until redeemed or replaced.

25 (d) This section does not apply to any of the following gift  
26 certificates issued on or after January 1, 1998, provided the  
27 expiration date appears in capital letters in at least 10-point font on  
28 the front of the gift certificate:

29 (1) Gift certificates that are distributed by the issuer to a  
30 consumer pursuant to an awards, loyalty, or promotional program

1 without any money or other thing of value being given in exchange  
2 for the gift certificate by the consumer.

3 (2) Gift certificates that are sold below face value at a volume  
4 discount to employers or to nonprofit and charitable organizations  
5 for fundraising purposes if the expiration date on those gift  
6 certificates is not more than 30 days after the date of sale.

7 (3) Gift certificates that are issued for a food product.

8 (e) Paragraph (2) of subdivision (a) does not apply to a  
9 dormancy fee on a gift card that meets all of the following criteria:

10 (1) The remaining value of the gift card is ~~ten dollars (\$10)~~ *five*  
11 *dollars (\$5)* or less each time the fee is assessed.

12 (2) The fee does not exceed one dollar (\$1) per month.

13 (3) There has been no activity on the gift card for 24  
14 consecutive months, including, but not limited to, purchases, the  
15 adding of value, or balance inquiries.

16 (4) The holder may reload or add value to the gift card.

17 (5) A statement is printed on the gift card in at least 10-point  
18 font stating the amount of the fee, how often the fee will occur, that  
19 the fee is triggered by inactivity of the gift card, and at what point  
20 the fee will be charged. The statement may appear on the front or  
21 back of the gift card, but shall appear in a location where it is  
22 visible to any purchaser prior to the purchase thereof.

23 (f) Nothing in paragraph (1) of subdivision (a) prevents an  
24 issuer of gift certificates from including on any gift certificate a  
25 provision that entitles the purchaser to a full refund of the amount  
26 that he or she paid for that gift certificate upon the occurrence of  
27 the following circumstances:

28 (1) The gift certificate is purchased as a gift for another person.

29 (2) The time in which the gift certificate may be redeemed is  
30 disclosed on the gift certificate.

31 (3) The holder of the gift certificate does not redeem the gift  
32 certificate within the time described in paragraph (2).

33 (g) The changes made to this section by the act adding this  
34 subdivision shall apply only to gift certificates issued on or after  
35 January 1, 2004.

36 SEC. 3. Section 1520.5 of the Code of Civil Procedure is  
37 amended to read:

38 1520.5. Section 1520 does not apply to gift certificates subject  
39 to Title 1.4A (commencing with Section 1749.45) of Part 4 of  
40 Division 3 of the Civil Code. However, Section 1520 applies to any

1 gift certificate that has an expiration date and that is given in  
2 exchange for money or any other thing of value.

3 SEC. 4. The enactment of this act creates no inference with  
4 respect to the validity or invalidity of any service fee imposed prior  
5 to the effective date of this act.

6 SEC. 5. The provisions of this act are severable. If any  
7 provision of this act or its application is held invalid, that invalidity  
8 shall not affect other provisions or applications that can be given  
9 effect without the invalid provision or application.

